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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

THE PEOPLE OF BIKINI, BY AND THROUGH
THE BIKINI/KILI COUNCIL, AND TOMAKI
JUDA, NATHAN NOTE, JOHNNY JOHNSON,
JIBAS LEJETO, KILON BAUNO, JACOB
JOHNSON, RUBON JUDA, MOSES LEWIS,
CALEP JOKDRU, MARTIBON BEJIKO, LAIJO
JELANG, LORE KESSIBUKI, ANDREW JAKEO,
PERO JOEL, HENCHI BALOS, AND GLEN LEWIS

Plaintiffs,

v.

UNITED STATES OF AMERICA,
DONALD P. HODEL, Secretary of Energy,
WILLIAM P. CLARK, Secretary of Interior,
CASPAR W. WEINBERGER, Secretary of Defense,
GEORGE P. SHULTZ, Secretary of State,
WILLIAM J. STANLEY, Director, Pacific Area
Support Office, Department of Energy

Defendants.

CIVIL NO. _____

COMPLAINT;
SUMMONS

COMPLAINT

NATURE OF ACTION

1. In 1946 the U.S. Government removed the people of
Bikini Atoll from their homeland so that the United States could

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use Bikini for testing its newly developed atomic bomb. The United States assured the Bikinians that they would be returned to their homeland when the United States no longer needed Bikini for nuclear testing. Following a superficial cleanup, resettlement of Bikini began in the early 1970's, but the Bikinians were again evacuated in 1978 after the discovery of radiation levels at Bikini in excess of federal radiation protection standards. Since 1979 the Bikinians have repeatedly asked defendants to conduct a radiological cleanup of Bikini Atoll to enable plaintiffs to return safely to their native land, but defendants have refused to perform such a cleanup.

2. In July 1947, the United States became administrator of Micronesia, including Bikini, under a United Nations Trusteeship Agreement, pursuant to which the United States agreed, inter alia, to "protect the inhabitants against the loss of their lands and resources." The United States has breached and continues to breach its obligations to the Bikinians under the Trusteeship Agreement and the United Nations Charter by its radiological contamination of Bikini and its refusal to conduct a radiological cleanup of Bikini. As a result of its nuclear testing at Bikini and continuing refusal to clean up the atoll, the United States has created a public nuisance at Bikini Atoll and has taken the Bikinians' land and lagoon in violation of the due process and taking clauses of the fifth amendment to the United States Constitution.

X

3. By this class action, plaintiffs seek declaratory and equitable relief, requiring defendants to conduct a radiological cleanup of Bikini Atoll, restore the atoll to its former safe, habitable and environmentally sound condition, and speedily resettle the people of Bikini on their atoll.

JURISDICTION

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1361. This action also arises under the Declaratory Judgment Act, 28 U.S.C. § 2201, the Administrative Procedure Act, 5 U.S.C. § 701 et seq., the Trusteeship Agreement for the Former Japanese Mandated Islands, 61 Stat. 3301, 80th Cong., 1st Sess. (1947), and the fifth amendment of the United States Constitution.

PLAINTIFFS

5. The people of Bikini, the class of plaintiffs for which this complaint is filed, are citizens of the Trust Territory of the Pacific Islands ("Trust Territory" or "Micronesia") and of the Marshall Islands. All plaintiffs were members of the Bikini community in 1946 when Bikini Atoll was evacuated prior to Operation Crossroads, the first American atomic tests at Bikini, or are descendants of such members. All Bikinians possess land rights on Bikini Atoll. The people of Bikini are governed by the Bikini/Kili Council, whose membership is determined in accordance with custom and tradition. There are currently fourteen Council members -- twelve from Kili Island

and two from Ejit Island in Majuro Atoll, which is also located in the Marshall Islands. The three principal officials of the Council are the Mayor, Scribe and Treasurer. The people of Bikini are recognized under the Marshall Islands Constitution as a political subdivision within the Marshall Islands, and the Bikini/Kili Council is recognized under this Constitution as the local governing body for the people of Bikini.

6. Plaintiff Tomaki Juda is the Mayor of the Bikini/Kili Council. He was born on Bikini Atoll in 1942, resided there until his relocation in 1946, and now lives on Kili.

7. Plaintiff Nathan Note, the Scribe of the Bikini/Kili Council, was born on Bikini Atoll in 1918. He was a member of the Bikini community (but not living on Bikini Atoll) when its members were relocated in 1946. He now lives on Kili.

8. Plaintiff Johnny Johnson is the Treasurer of the Bikini/Kili Council. He was born on Kili in 1948, and now lives on Kili.

9. Plaintiff Jibas Lejeto is a member of the Bikini/Kili Council. He was born on Bikini Atoll in 1908, resided there until his relocation in 1946, and now lives on Kili.

10. Plaintiff Kilon Bauno is a member of the Bikini/Kili Council. He was born on Bikini Atoll in 1921, resided there until his relocation in 1946, and now lives on Kili.

11. Plaintiff Jacob Johnson is a member of the Bikini/Kili Council. He was born on Bikini Atoll in 1922,

resided there until his relocation in 1946, and now lives on Kili.

12. Plaintiff Rubon Juda is a member of the Bikini/Kili Council. He was born on Bikini Atoll in 1930, resided there until his relocation in 1946, and now lives on Kili.

13. Plaintiff Moses Lewis is a member of the Bikini/Kili Council. He was born on Bikini Atoll in 1924, resided there until his relocation in 1946, and now lives on Kili.

14. Plaintiff Calep Jokdru is a member of the Bikini/Kili Council. He was born on Bikini Atoll in 1915, resided there until his relocation in 1946, and now lives on Kili.

15. Plaintiff Martibon Bejiko is a member of the Bikini/Kili Council. He was born on Bikini Atoll in 1906, resided there until his relocation in 1946, and now lives on Kili.

16. Plaintiff Laijo Jelang is a member of the Bikini/Kili Council. He was born on Bikini Atoll in 1910, resided there until his relocation in 1946, and now lives on Kili.

17. Plaintiff Lore Kessibuki is a member of the Bikini/Kili Council. He was born on Bikini Atoll in 1909, resided there until his relocation in 1946, and now lives on Kili.

18. Plaintiff Andrew Jakeo is a member of the Bikini/Kili Council. He was born on Bikini Atoll in 1912 and

resided there until his relocation in 1946. He moved back to Bikini Atoll in 1970 and resided there until he was again relocated in August 1978. He now lives on Ejit.

19. Plaintiff Pero Joel is a member of the Bikini/Kili Council. He was born on Bikini Atoll in 1925 and resided there until his relocation in 1946. He moved back to Bikini Atoll in 1970 and resided there until he was again relocated in August 1978. He now lives on Ejit.

20. Plaintiff Henchi Balos is the elected representative of the Bikinians to the Marshall Islands legislature, the Nitijela. He was born on Rongerik Atoll in 1946 and now lives on Ejit.

21. Plaintiff Glen Lewis was born on Kili in 1964. He is currently a student at Hawaii Pacific College and lives in Honolulu, Hawaii.

CLASS ACTION ALLEGATIONS

22. This Complaint is filed on behalf of the named plaintiffs and all people of Bikini with land rights in Bikini Atoll.

23. The class is so numerous that their joinder is impracticable. There are currently over 1100 members of the Bikini community.

24. This action involves questions of law and fact common to the class, and the claims of the named plaintiffs are typical of the claims of the class. The named plaintiffs will adequately and fairly protect the interests of the class,

and they are represented by counsel experienced in class action litigation.

25. Defendants have acted on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

DEFENDANTS

26. Defendant Donald P. Hodel is sued in his official capacity as Secretary of Energy and successor-in-interest to the Chairman of the Atomic Energy Commission ("AEC"). Defendant Hodel is the principal federal official charged with the responsibility of ensuring that the activities of the Department of Energy ("DOE") are carried out in accordance with the law. The AEC and DOD were responsible for the U.S. nuclear testing program at Bikini. Under the Atomic Energy Act of 1954, 42 U.S.C. § 2011 et seq., the AEC was obligated to protect health and minimize danger to life and property from hazards associated with its activities. The AEC was abolished on January 19, 1975, and all of its functions relevant herein were transferred to the Energy Research and Development Administration ("ERDA") by the Energy Reorganization Act of 1974, Pub. L. No. 93-438, 88 Stat. 1233, 42 U.S.C. § 5814 (1976). ERDA was abolished on October 1, 1977, and its functions were transferred to the Secretary of Energy (unless otherwise specifically provided) by the Department of Energy Organization Act, Pub. L. No. 95-91,

91 Stat. 565, 42 U.S.C. § 7151(a) and Exec. Order No. 12038, 43 Fed. Reg. 4957 (Feb. 3, 1978), 42 U.S.C. § 7151 note, as amended by Exec. Order No. 12156, 44 Fed. Reg. 53073 (Sept. 10, 1979).

27. Defendant William P. Clark, who is sued in his official capacity as Secretary of the Interior, is the principal federal official charged with the responsibility of ensuring that the activities of the Department of the Interior ("DOI") are carried out in accordance with the law. In 1951, President Harry S Truman delegated responsibility for the civil administration of the Trust Territory to the Secretary of Interior. Exec. Order No. 10265, 3 C.F.R. 766 (1949-53 comp.), reprinted in 48 U.S.C.A. note preceding § 1491. This order was superseded by Exec. Order No. 11021, 3 C.F.R. 600 (1959-63 comp.), as amended by Exec. Order No. 11944, 3 C.F.R. 156 (1977), reprinted in 48 U.S.C.A. § 1641 note. The Secretary of the Interior has had administrative responsibility for the Trust Territory since 1951.

28. Defendant Caspar W. Weinberger, who is sued in his official capacity as Secretary of Defense, is the principal federal official charged with the responsibility of ensuring that the activities of the Department of Defense ("DOD") are carried out in accordance with the law. The National Security Act Amendments of 1949, Ch. 412, § 2, 63 Stat. 579, established the DOD as an executive department of the government which includes the military departments of the Army, Navy and Air Force.

29. Defendant George P. Shultz, who is sued in his official capacity as Secretary of State, is the principal federal official charged with the responsibility of ensuring that the activities of the Department of State are carried out in accordance with the law. The Secretary of State is charged with the responsibility of interpreting the rights and obligations of the United States arising out of the Trusteeship Agreement for the Territory of the Pacific Islands. Exec. Order No. 11021, 3 C.F.R. 600 (1959-63 comp.), as amended by Exec. Order No. 11944, 3 C.F.R. 156 (1977), reprinted in 48 U.S.C. § 1681 note, and Exec. Order No. 10265, 3 C.F.R. 766 (1949-53 comp.), reprinted in 42 U.S.C. note preceding § 1451 (1976).

30. Defendant William J. Stanley is sued in his official capacity as Director of the Pacific Area Support Office of the Department of Energy (formerly ERDA), which is located in Honolulu, Hawaii. Prior to January 19, 1975, the Honolulu Area Office of the Atomic Energy Commission had the responsibility for coordinating the support for AEC activities in the Pacific, including the AEC Biology and Medicine Program. Defendant Stanley is a resident of Hawaii. A significant number of the acts and decisions forming the basis of plaintiffs' complaint occurred in the district of Hawaii.

INTRODUCTION AND BACKGROUND

A. Location and Geography of Bikini Atoll

31. Bikini Atoll is one of the twenty-nine atolls and five islands comprising the Marshall Islands, which are scattered over 357,000 square miles north of the equator in the north central Pacific Ocean. A map of the Marshall Islands is attached as Exhibit A and is incorporated herein by reference. The Marshall, Caroline and Mariana Islands (collectively known as Micronesia) are the geographical components of the Trust Territory.

32. The twenty-three islands of Bikini Atoll have a combined land area of 2.32 square miles. Bikini Island, the largest of the atoll's islands, covers .66 square miles. The atoll's islands enclose a lagoon area of approximately 243 square miles. A map of Bikini Atoll is attached as Exhibit B and is incorporated herein by reference.

B. Administration of the Marshall Islands

33. Japan administered Micronesia under a League of Nations Mandate until World War II, when the islands were occupied by U.S. forces in 1944. On January 30, 1944, the United States invaded Majuro Atoll and on March 29, 1944, U.S. soldiers landed at Bikini Atoll.

34. Shortly after the U.S. invasion of Majuro, Admiral Chester W. Nimitz, Commander-in-Chief of the United States Pacific Fleet and the U.S. Military Governor of the

Marshall Islands, issued Proclamation Number One, pursuant to which the United States assumed all powers of government in the Marshall Islands. Proclamation Number One, which became effective as to Bikini Atoll on March 29, 1944 provided in relevant part:

Your existing personal and property rights will be respected and your existing laws and customs remain in force and effect, except to the extent that it is necessary for me in the exercise of my powers and duties to change them.

35. Subsequently, Admiral Nimitz issued Proclamation Number Two, which set forth numerous offenses against U.S. Forces that were punishable by death. It also detailed additional offenses punishable by fine or imprisonment at hard labor or both. Among the offenses thus categorized were hostile or disrespectful utterances toward the U.S. military government.

36. On July 18, 1947, the United States entered into a Trusteeship Agreement with the United Nations under which Micronesia became a U.N. trust territory administered by the United States. See Congressional Joint Resolution, 61 Stat. 397; Trusteeship Agreement for the Former Japanese Mandated Islands ("Trusteeship Agreement"), 61 Stat. 3301, 80th Cong., 1st Sess. (1947), T.I.A.S. No. 1665. A copy of the Trusteeship Agreement is attached as Exhibit C and incorporated herein by reference.

37. The Trusteeship Agreement confers certain powers upon the United States as the Administering Authority for the Trust Territory and in return imposes certain duties and obligations upon the United States for the benefit of the citizens of the Trust Territory. Article 6 of the Trusteeship Agreement obligates the United States, inter alia, to:

- promote the economic advancement and self-sufficiency of the inhabitants;
- protect the inhabitants against the loss of their lands and resources;
- protect the rights and fundamental freedoms of all elements of the population without discrimination;
- protect the health of the inhabitants; and
- promote the economic advancement and self-sufficiency of the inhabitants.

38. U.S. administration of the Trust Territory is also governed by Article 73 of the United Nations Charter, 59 Stat. 1031, 1048, T.I.A.S. No. 993 (1945), which provides in relevant part:

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories and, to this end:

a. To ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protections against abuses

39. On July 18, 1947, President Truman terminated the military government of the Trust Territory and delegated civilian administration of the Trust Territory to the Secretary of the Navy. Exec. Order No. 9875, 3 C.F.R. 658 (1943-48 comp.). In 1951, administrative responsibilities were transferred to the Interior Department, Exec. Order No. 10265, 3 C.F.R. 766 (1949-53 comp.), which has administered Micronesia since 1951. See also Exec. Order No. 11021, 3 C.F.R. 600 (1959-63 comp.).

40. The executive authority of the Government of the Trust Territory is vested in the High Commissioner of the Trust Territory, who acts under the direction of the Secretary of the Interior. See Department of the Interior Orders Nos. 2918 (December 27, 1968, as amended March 24, 1976), 3027 (September 29, 1978), and 3039 (April 25, 1979). The High Commissioner is appointed by the President with the advice and consent of the U.S. Senate.

41. In 1969, negotiations commenced between the Government of the United States and the inhabitants of the Trust Territory regarding the future political relationship between Micronesia and the United States. Negotiations with the Marshall Islands have produced a Compact of Free Association,

which, if ratified by Congress, would define the Marshall Islands' future international relationships. President Reagan transmitted the Compact to Congress on March 30, 1984.

C. Bikini and Its Early History

42. Bikini is relatively distant and isolated from the other atolls in the Marshall Islands. Before 1946, the Bikinians maintained no regular contacts with other peoples, made few journeys beyond Bikini's reef, and were among the last Marshallese people to be affected by foreign influences. As a result, other Marshallese, as anthropologists have noted, considered them to be a backward people.

43. The Bikinians have always maintained a deep emotional attachment to their homeland. Under traditional Marshallese law and custom, each Bikinian was -- and still is -- born with land rights in the islands of Bikini Atoll. These rights provide security to the members of the community. Because land in the Marshall Islands is so scarce, the Marshallese do not regard land as a commodity that can be bought or sold. Each individual is identified with the land that is his birthright, and ties to the land are unusually strong. Throughout Marshallese history land has been regarded as sacred. It has never been sold or given away to outsiders, except through fear of physical force or moral sanction.

44. Prior to their removal from Bikini Atoll, the people of Bikini relied almost exclusively upon Bikini's land and lagoon for their needs. Beginning in the early twentieth century, the Bikinians also produced copra (dried coconut meat) as an export crop. The people remained economically self-sufficient, and their life style changed little from the time they first settled on Bikini until their removal in 1946.

D. Selection of Bikini for Operation Crossroads

45. On July 16, 1945, the United States exploded the world's first atomic bomb at Alamogordo, New Mexico. U.S. forces detonated the second atomic bomb over Hiroshima on August 6, 1945, and the third over Nagasaki three days later. Japan announced its surrender to the United States the next day, marking the end of World War II.

46. At the war's end, U.S. scientific, military and political leaders had little knowledge about the force and effects of atomic weapons. Within weeks after the war ended, the United States began to plan controlled tests to study the effects of atomic bombs on naval vessels.

47. On November 10, 1945, the United States Joint Chiefs of Staff formed a subcommittee to develop plans for a series of atomic tests, code-named Operation Crossroads, and to locate an appropriate test site. The Joint Chiefs directed the task force commander in charge of the tests to "prepare

plans for the naval test including selection of a suitable site which will permit accomplishment of the test with acceptable risk and minimum hazard."

48. In January 1946, with President Truman's approval, the Joint Chiefs selected Bikini Atoll for Operations Crossroads.

E. Removal From Bikini

49. On Sunday, February 10, 1946, Commodore Ben Wyatt, the American Military Governor of the Marshall Islands, flew to Bikini and, at the conclusion of the islanders' church services, told the Bikinians that they must leave their homes so that the United States could test its nuclear weapons. According to Navy accounts, Commodore Wyatt "compared the Bikinians to the children of Israel whom the Lord saved from their enemy and led into the Promised Land. He told them of the bomb that men in America had made and of the destruction it had wrought upon the enemy."

50. The Bikinians did not wish to leave their atoll, but, in view of the United States' defeat of Japan and Commodore Wyatt's description of nuclear weapons, they believed themselves powerless to resist the United States. To remain on Bikini and tell the United States to look elsewhere was not a realistic option. The Bikinians were also accustomed to taking military orders, having been under the control of Japanese soldiers during World War II. Under Proclamation Number Two, the Bikinians' refusal to obey a U.S. order or request could

result in severe punishment. Moreover, the Bikinians were assured that their removal would be only temporary, that they would be returned to their atoll when the United States no longer needed it for nuclear testing and that they would be cared for by the United States during the period of their relocation. Lastly, the Bikinians are a deeply religious people, having been converted to Christianity and educated by missionaries in the early twentieth century, and Commodore Wyatt's tactic of requesting their departure in the name of the Lord had an apostolic effect on the people, who implicitly associated Americans with Christianity.

51. On March 7, 1946, the U.S. Navy removed all 167 inhabitants of Bikini from their atoll as the islanders wept and sang songs of farewell. A Navy film of their removal described the Bikinians as "a nomadic group," and stated that "they are very pleased that the Yanks are going to add a little variety to their lives."

F. The Bikinians' Odyssey:
Rongerik, Kwajalein, And The Move To Kili

52. From Bikini, the U.S. Navy took the Bikinians by boat to Rongerik Atoll, 150 miles east of Bikini, and left them with a few weeks' supply of food and water.

53. Rongerik Atoll has nearly 75% less land area than Bikini Atoll. Coconut palms and pandanus on Rongerik are considerably less productive than those on Bikini, and the

quantity and quality of fish in Rongerik's lagoon are inferior to those at Bikini.

54. Many species of fish in Rongerik's lagoon were toxic. Because the Bikinians believed they would be living on Rongerik for only a short time, they failed to tell the Navy that, according to Marshallese mythology, Rongerik was inhabited by an evil spirit that contaminated the fish.

55. In May 1946, two months after the move to Rongerik, the Bikinians asked the Navy for permission to return home. Their request was denied. Shortly thereafter, severe food shortages occurred, eventually reducing the people to near starvation. A physician sent to examine the Bikinians in July 1947 reported that they were visibly suffering from malnutrition.

56. Following newspaper disclosure of conditions on Rongerik, Navy Commodore George A. Seitz ordered a Board of Investigation to consider the resettlement of the Bikinians. On September 1, 1947, Commodore Seitz went to Rongerik and met with the people, who requested that they be returned to Bikini.

57. In October 1947, the Navy announced that the Bikinians would be moved to Ujelang Atoll, 300 miles southwest of Bikini. On November 22, ten Bikini men and 20 Navy Seabees arrived on Ujelang and began to construct a village. Less than two weeks later, however, the United States announced that Enwetak Atoll in the Marshall Islands would also be used

for atomic tests, and that Enewetak's inhabitants would be relocated to Ujelang. The Enewetak people were moved to Ujelang on December 21, while the Bikinians remained on Rongerik.

58. In February 1948, an anthropologist sent by the U.S. Government found starvation conditions among the Bikinians on Rongerik. One month later, the Navy moved the Bikinians to a temporary campsite on Kwajalein Atoll, which was being developed as a U.S. military base. The Bikinians lived in tents on Kwajalein for six months, and in September were moved to Kili Island, 425 miles southeast of Bikini Atoll.

59. Kili's 200 acres amount to only approximately one-ninth the land area of Bikini Atoll. Kili is an island, not an atoll, and has neither a lagoon nor sheltered fishing grounds. Thus, the superior fishing skills the Bikinians had developed on Bikini were largely useless on Kili. Moreover, because Kili has no lagoon and its longitudinal access lies almost parallel to the southeast-northeast trade winds, there is no protected anchorage on the island.

60. From late October to late spring, access to Kili by vessel is extremely hazardous because of high surf conditions, making fishing and offloading of ships with food supplies sometimes impossible. Infrequent and unpredictable visits by field trip ships to Kili have left the Bikinians with little incentive to produce copra for export.

61. Serious food shortages have occurred almost annually on Kili. The situation in 1952 was so severe that it was necessary to air drop food to the island. This was done without parachutes, and most of the food was smashed and rendered inedible. A devastating typhoon on Kili in 1957 destroyed all the taro and nearly half the breadfruit trees.

62. In the spring of 1961 and in April 1963, the Bikinians presented petitions to the United States, through officers of Trust Territory field trip ships, expressing dissatisfaction with Kili and requesting resettlement elsewhere.

63. On February 17, 1964, the Bikinians transmitted a petition to the High Commissioner begging that the United States fulfill its promise to take care of them:

Before people who have power on this earth we are powerless. We stand before you and express our desire that you move [us] away from here for today we find Kili tiny and its environs wretched. We have lived here and tried to make a go of it for 15 years and all of us find that it is insufficient to take care of our health and so we place our hope in you that you might place us on some land that can support us and our health and we believe you have plenty of spacious lands at your disposal.

64. On December 14, 1969, the Bikini Magistrate wrote to the High Commissioner requesting aid, compensation for the loss of Bikini Atoll, and legal counsel for the Bikinians. Of the U.S. treatment of the Bikinians he wrote:

On Bikini we were men responsible for our lives but the United States chose to move us, taking the responsibility for our welfare in their hands. They have forced us to depend on their ships for our lives. We have been humiliated by being put in a place that forces us to beg for help. We ask that the United States discontinue to neglect their responsibility.

Our houses are falling down around us as we cannot afford to buy material to repair them because most of our income is spent on food. We are starving during the winter months. Is this the way the United States treats the people who have sacrificed everything to help America with her research? We trusted the Navy with our lives; are we to believe that the United States has turned away from that trust?

65. In response to these charges of neglect, the High Commissioner wrote the Department of Interior stating, in relevant part, that "the Government had the complete right to commit waste, make permanently unusable, alter and destroy the islands in the atoll or portions thereof in the testing of nuclear weapons."

66. Conditions on Kili have been and remain adverse and overcrowded. Health care, education and housing are inadequate. Moreover, until recently, the United States has failed to provide suitable means for transportation to and from Kili, which has, in essence, made the people captives there for a substantial portion of each year. As a result of Kili's isolation, the Bikinians have almost no cash producing activities,

and there is virtually no local economy. Very few Bikinians speak and read English, and the people lacked access to legal counsel until 1975.

67. Despite adverse conditions on Kili and the severe decline in their standard of living, the majority of Bikinians continue to reside there today, because they have no other place to go.

G. Bikini Proving Grounds

68. During Operation Crossroads, the first series of atomic tests at Bikini, the United States deployed 250 ships, more than 150 aircraft, and 42,000 military, scientific, and technical personnel and observers. The United States detonated 23 announced atom and hydrogen bombs at Bikini Atoll between June 30, 1946 and July 22, 1958.

69. The 23 nuclear tests caused severe destruction to the atoll. For example, the "Baker" shot in 1946 dumped 500,000 tons of radioactive mud on the atoll's islands and into the lagoon, and oil discharged from target ships in the lagoon destroyed coral, algae and shellfish on the reef.

70. On March 1, 1954, the United States detonated the "Bravo" shot at Bikini Atoll. "Bravo," the largest explosion ever detonated by the United States, was nearly 1,000 times more powerful than the Hiroshima-type atomic bombs tested at Bikini in 1946. The bomb annihilated one entire island on Bikini, parts of two others, and left a one-mile circular hole in the reef.

71. What was falsely described by the United States at the time as an "unpredicted" shift in wind direction to the east sent the cloud of radioactive particles from "Bravo" over Bikini Island and 240 miles beyond, depositing radioactive fallout on the nearby people of Rongelap and Utirik Atolls, ninety percent of whom suffered skin lesions and loss of hair.

72. In fact, the United States detonated the "Bravo" test with prior knowledge that the shot would contaminate parts of Bikini. The weather review six hours before the shot revealed that winds were headed directly to the east and that two of Bikini's islands would be contaminated by the blast.

73. Six weeks after the "Bravo" shot, the Marshallese people, including a Bikinian representative, submitted a petition to the U.N. Trusteeship Council urging the immediate cessation of testing and compensation for the loss of lands. The petition stated in relevant part:

Land means a great deal to the Marshallese. It means more than just a place where you can plant your food crops and build your houses; or a place where you can bury your dead. It is the very life of the people. Take away their land and their spirits go also.

74. In response to the petition, the U.N. Trusteeship Council approved a resolution urging the United States to compensate the Marshallese for the loss of their lands. The High Commissioner described the petition in a letter to the Interior Department as "one of the things the [Marshallese]

are so fond of doing -- passing resolutions and getting up petitions."

75. On March 9, 1956, the Marshallese people again petitioned the United Nations, reiterating their requests from the 1954 petition.

76. In 1958, President Eisenhower declared a moratorium on U.S. atmospheric nuclear testing, ending the twelve-year nuclear testing program in the Marshall Islands.

77. At the conclusion of the testing program some of Bikini's islands had totally disappeared, and others were mere sand spits; all had suffered some loss of topsoil. Virtually all of the coconut palms, which were essential to life and the economy of Bikini, had been destroyed. The atoll was covered by dense scrub vegetation, and there remained a large amount of equipment and debris from the tests, some of which contained residual radiation.

78. Although the atomic testing program cost at least \$20 billion through 1954, the United States has never questioned its value. In its 1953 Annual Report, the AEC stated:

Each of the tests involved a major expenditure of money, manpower, scientific effort and time. Nevertheless, in accelerating the rate of weapons development, they saved far more than their cost.

In this report, the AEC also explained why the tests had been held on Bikini: "The Commission felt that tests should be

held overseas until it could be established more definitely that continental detonations would not endanger the public health and safety."

H. 1967 Survey of Bikini Atoll

79. By letter dated December 7, 1966, Interior Secretary Stewart L. Udall asked AEC Chairman Glenn T. Seaborg to have the AEC determine whether Bikini and its lagoon were safe for continued habitation. Secretary Udall acknowledged that Kili was an unsatisfactory home for the Bikinians, and added: "Indeed there is a limit to how long we can perpetuate the odyssey of the Bikini people without a decidedly, and I might add justifiably, unfavorable reaction that could have far reaching implications."

80. In September 1966, Neil S. Rasmussen of the AEC Honolulu Area Office informed the High Commissioner that AEC scientists had unofficially decided that "Bikini is now ready for human habitation once again." This information was conveyed to the people of Bikini on September 23, 1966.

81. In April and May 1967, the AEC conducted a radiological survey of Bikini Atoll to determine whether the Bikinians could return safely. The AEC measured two aspects of total radiation dose -- external and internal -- and made predictions as to future safety.

82. In order to assess internal dose, the AEC had to make certain dietary assumptions. Lacking detailed information

on the Bikinians' diet, the AEC used a 1957 study by Gordon Dunning on the diet of the Rongalapese people. The 1957 Dunning study showed that the only liquid in the Rongelap diet is coconut milk and that the daily consumption of liquid totalled nine grams, which is less than one-third of an ounce. The AEC should have known that this figure was grossly erroneous and should have been 50 to 100 times greater. Using this erroneous diet information, the AEC report concluded that "the probable total exposure to the Bikinians upon their return will be acceptable."

83. A reasonable estimate of the Bikinians' coconut consumption would have produced much higher radiation dose estimates and would have resulted in the conclusion that it was unsafe to live on Bikini while consuming locally produced food.

84. The 1967 AEC survey also reviewed a 1964 study of ground water on Bikini and concluded that "[w]ell water could be used safely by the natives upon their return to Bikini."

85. In 1968, an AEC Ad Hoc Committee reviewed the results of the AEC's 1967 survey and declared that Bikini was "once again safe for human habitation."

I. Bikini Resettlement And Survey Dispute

86. On July 11, 1968, the Bikini/Kili Council wrote to President Lyndon B. Johnson requesting that the

Bikinians be allowed to return to Bikini "in a short time." The next month, President Johnson announced that "the major islands of [Bikini Atoll] are now safe for human habitation" and that the Bikinians could return to their atoll. He instructed the Secretary of Interior, Secretary of Defense and Chairman of the Atomic Energy Commission to cooperate in effecting the return of the Bikini people to their home atoll. DOD was to assume responsibility for the cleanup aspects of the program, including the removal of vegetative overgrowth, radioactive debris and unusable structures. DOI was to assume responsibility for resettlement, agricultural reclamation and construction of housing and community facilities. The AEC, through its Pacific Area Support Office, was to assume responsibility for the radiological health and safety, conduct follow-up radiological surveys to confirm exposure estimates, and conduct radiological monitoring of personnel as they returned to Bikini.

87. In February 1969, DOD and the AEC commenced a cleanup of Bikini. Radioactive equipment and debris was dumped in the lagoon or buried in burrow pits, but Bikini's topsoil was not removed because, as the AEC stated at the time, "there is virtually no radiation left, and we can find no discernible effect on either plant or animal life."

88. In June 1969, the first group of Bikinians returned to Bikini to assist in the resettlement project.

_____ began to construct approximately 40 houses on Bikini
_____ Island, and more Bikinians moved to Bikini in the early 1970's.

89. Following the release in 1973 of a three-volume
_____rough radiological survey of Enewetak Atoll, the AEC in
_____4 informed DOI that a sophisticated radiological survey of
_____Bikini was desirable, at which point DOI halted construction
_____and resettlement activities on Bikini. At this time, approxi-
_____ately 100 Bikinians were living on Bikini Island.

90. On March 7, 1975, DOI Secretary Rogers C.B.
_____ton wrote DOD Secretary James R. Schlesinger stating that
_____ERDA, which had recently assumed the AEC's functions, was pre-
_____pared to conduct a thorough radiological survey of Bikini Atoll
_____April provided DOD could provide the necessary financial and
_____logistic support. DOD responded that it was unable to provide
_____the necessary support.


91. On June 19, 1975, the Assistant Secretary of
_____Interior wrote ERDA and DOD again requesting a thorough
_____radiological survey. He declared that neither DOI nor ERDA
_____could provide funds to reimburse DOD and stated that he was
_____therefore

deeply concerned that a quality radiological
survey such as that performed on Enewetak,
whose people will not be coming back for
some time, cannot be made available in a
timely fashion for the Bikinians whose
return is imminent.

. . . [O]ur commitments to insure the safe return of the Bikinians . . . make it imperative that they in their environment be attended to with the best testing equipment available.

It appears that none of the involved Departments has budgeted adequately for this needed and highly warranted effort in order to meet our statutory and moral commitments to the people of this area

92. Meanwhile, a limited ground radiological survey of Bikini Island conducted in June 1975 found the island's interior too radioactive for safe habitation and the water from some wells too radioactive for drinking.

 93. On October 10, 1975, the Bikinians brought suit in this Court seeking to compel the United States to conduct a comprehensive radiological survey of Bikini Atoll. People of Bikini v. Seamans, Civ. 75-348 (D. Hawaii). In the complaint, the Bikinians said: "For us to make an intelligent decision to resettle Bikini Atoll, we must be able to weigh our desire to return against the radiological risks of returning. We have not been provided with that information"

94. Settlement discussions followed, but the various agencies involved -- ERDA, DOD, DOI and DOE (which assumed ERDA's functions in 1977) -- spent three years disputing which agency should pay for the survey.

95. A Memorandum Agreement settling People of Bikini v. Seamans provided that a thorough radiological survey of Bikini Atoll, "using the latest and most effective technology," would be completed by December 31, 1978.

J. Second Removal From Bikini

96. Before the radiological survey was conducted, tests in 1977 showed that the level of radioactive strontium-90 in Bikini Island well water exceeded acceptable federal standards. In addition, coconuts were found to have unacceptably high radiation levels, and the people living on Bikini Island were told to eat no more than one coconut a day, well below their normal intake of five to ten.

97. In April 1978, examinations of the islanders by a U.S. medical team showed an "incredible" one-year 75% increase in body burdens of radioactive cesium-137, causing scientists to conclude that the people likely had ingested the largest amounts of radiation of any known population.

98. In August 1978, the United States removed the 139 people on Bikini. Some were relocated to Ejit, while others were moved back to Kili. The United States has not permitted anyone to reside on Bikini Atoll since 1978.

99. On August 16, 1978, U.S. officials issued a "Statement of Understanding" concerning the move of the Bikinians, which recognized that Kili might have to become more than the temporary home it had been since 1948. The document stated in relevant part: "Because Kili Island has, until recent weeks, been regarded as solely a temporary relocation site for the people of Bikini, the [U.S. and Trust

Territory] Governments have never undertaken to construct permanent facilities there, nor to improve significantly any of the existing Kili facilities."

K. 1978 Radiological Survey and
1983 Bikini Atoll Rehabilitation Report

100. In fulfilling its commitment under the settlement agreement in People of Bikini v. Seamans, and in response to a July 19, 1977 petition from the people of Bikini, DOE conducted a thorough aerial/radiological survey of Bikini in 1978. The survey concluded that Bikini was not safe for human habitation.

101. On July 1, 1979, DOI reported to the U.S. Congress on the radiological status of Bikini and Eneu Islands, the two principal residential islands in the atoll:

. . . [N]ew data [from the 1978 radiological survey] reaffirmed that Bikini Island could not be used by the people of Bikini for at least the next 30 years, and possibly the next 60 years [T]here was no question that the island of Eneu must be placed off limits as a place of residence for the Bikini people for at least another 20-25 years.

102. Commencing in 1979, when they were informed of the radiological status of Bikini, the people of Bikini held several meetings with DOI and DOE officials asking the United States to conduct a radiological cleanup of Bikini.

103. At the request of the people of Bikini, Congress appropriated funds in 1982 for a study of the feasibility and

✓
cost of cleaning up Bikini Atoll to meet federal radiation protection standards. The Bikini Atoll Rehabilitation Committee, a blue-ribbon team of scientists chaired by Henry I. Kohn, Professor Emeritus of Radiation Biology at Harvard Medical School, was established through DOI to conduct this study.

104. On November 23, 1983, the Committee issued an interim report, which concluded that if no steps are taken to clean up Bikini Atoll, the Bikinians will have to wait approximately 100 years for the half-life disintegration of the radio-nuclides to reduce radiation levels to acceptable federal radiation protection standards. The Committee also concluded that a cleanup of Bikini and Eneu Islands is technologically feasible and that the estimated cost would be approximately \$100 million, which amounts to approximately one-tenth of one percent of the present value of the \$20 billion spent by the United States on the Pacific nuclear testing program.

105. Prior to the publication of the Committee's interim report in November 1983, the people of Bikini had no reason to believe that a radiological cleanup of Bikini Atoll was technologically feasible. In fact, the United States led the Bikinians to believe that such a cleanup could not be accomplished.

L. Prohibitions Against Return To Bikini Atoll

106. Since May 1946, two months after they were evacuated, the Bikinians have repeatedly and continuously

made known to U.S. representatives their desire to return to Bikini Atoll. The United States, in turn, has repeatedly affirmed that its occupation and use of Bikini was temporary only and that the Bikinians could return when the United States no longer needed the atoll for nuclear testing, and it was safe for resettlement.

107. During the 1950's, the U.S. and Trust Territory Governments executed several documents purporting to convey title to Bikini from the people of Bikini to these governments. On January 24, 1979, the High Commissioner executed a Quitclaim Deed pursuant to DOI Secretarial Order No. 3030 which returned ownership of Bikini Atoll to the people of Bikini as a matter of law. Although U.S. use and occupancy of the atoll has ceased, the United States has prohibited the Bikinians from returning to Bikini because of the unsafe conditions it has created there.

M. Equitable Relief

108. Plaintiffs are seeking equitable relief because they have no adequate remedy at law. As described more fully in paragraph 43, land is extremely scarce in the Marshall Islands, and each Bikinian is identified with the land that is his birth-right. Since the Marshallese do not regard land as a commodity that can be bought or sold, no amount of money damages could fully compensate plaintiffs for the loss of their lands and culture. Moreover, plaintiffs will suffer irreparable injury

in the event that their prayer for equitable relief is denied. The longer they are forced to live away from Bikini, the greater their loss of cultural identity becomes. By the year 2009, the earliest date the United States has predicted for a safe return to Bikini, it is likely that little, if any, of the native Bikini culture or tradition will remain. Finally, it is apparent that the public interest will be served by granting plaintiffs' claim for equitable relief. The United States has reaped the benefits it sought in removing the people of Bikini from their homeland. The U.S. nuclear testing program at Bikini Atoll resulted in significant strategic benefits to the United States and led directly to savings of billions of dollars in the U.S. defense budget. After a sacrifice of such magnitude, the Bikinians deserve to have their atoll restored to its former safe and environmentally sound condition.

COUNT I

VIOLATION OF TRUSTEESHIP AGREEMENT AND UNITED NATIONS CHARTER

109. Paragraphs 1-108 are realleged and incorporated by reference.

110. The Trusteeship Agreement (see paragraphs 36-37) is a treaty between the United States and the United Nations, pursuant to which the United Nations conferred certain powers upon the United States as Administering Authority for the Trust Territory and, in return, the United States agreed to

act as trustee for the benefit of the people of the Trust Territory, including the people of Bikini, and assumed certain duties and obligations for the benefit of these people. The Trusteeship Agreement is currently in effect.

111. The duties and obligations assumed by the United States under the Trusteeship Agreement were delegated to defendant Secretaries of Energy, Interior, Defense and State, and Director of the DOE Pacific Area Support Office under various orders, regulations, agreements and memoranda of understanding as set forth in paragraphs 26-30, 39, 86, 95 and 99.

112. The duties and obligations assumed by defendants under Article 6 of the Trusteeship Agreement (see paragraph 37) include the duty to: (a) perform a radiological cleanup of Bikini Atoll to ensure that radiological conditions are within acceptable federal radiation standards and to restore Bikini Atoll to its former safe, habitable and environmentally sound condition; (b) replant coconut, pandanus, breadfruit and other native agricultural products on the atoll; (c) build sufficient housing, community buildings and infrastructure for all returning Bikinians; and (d) provide health care and a radiological monitoring program for the Bikinians.

113. Beginning as early as the summer of 1979, when they were informed that Bikini Atoll would be radiologically

unsafe for many decades, the people of Bikini repeatedly and continuously requested that defendants conduct a radiological cleanup of Bikini Atoll to enable them to return to their homeland under radiologically safe conditions. Defendants have violated and continue to violate their obligations to the people of Bikini under Article 6 of the Trusteeship Agreement and Article 73 of the United Nations Charter by repeatedly and continuously failing, refusing and otherwise neglecting to perform such a cleanup.

114. Defendants have violated and continue to violate their duties and obligations to the people of Bikini under Article 6 of the Trusteeship Agreement and Article 73 of the United Nations Charter in the following other ways:

(a) Defendants have failed to protect the Bikinians against the loss of their lands by conducting at least 23 nuclear tests at Bikini which destroyed entire islands and seriously damaged others, by refusing to postpone or cancel the "Bravo" shot despite foreknowledge that shifting winds would contaminate the islands in the atoll, and by delaying the performance of critical radiological surveys at Bikini.

(b) Defendants have failed to protect the health of the people of Bikini by neglecting to provide necessary food on Rongerik, by resettling them on Bikini Island from 1969 to 1978 without adequate prior testing to determine whether the island was radiologically safe, by their ongoing failure to

provide necessary food on Kili, and by their ongoing failure to provide adequate health care for the displaced Bikinians.

(c) Defendants have failed to promote the economic advancement and self-sufficiency of the people of Bikini by removing them from a thriving coconut and marine-based self-sufficient existence to islands that were substantially smaller in land mass and provided few, if any, of the natural resources needed to sustain their economic and physical well-being.

(d) Defendants have failed to promote the social advancement of the people of Bikini or their rights and fundamental freedoms by depriving them of their land, which under Marshallese law and custom vests every Bikinian with land rights at Bikini. Only the return to their homeland can restore the Bikinians to their rightful social order and dignity.

115. As a result of defendants' above-described violations of Article 6 of the Trusteeship Agreement and Article 73 of the United Nations Charter, the people of Bikini have suffered and continue to suffer the loss of their land and lagoon, the loss of their cultural heritage, the loss of their economic self-sufficiency, and severe shortages in basic necessities.

COUNT II

CREATION OF A PUBLIC NUISANCE

116. Paragraphs 1-108 and 110-115 are realleged and incorporated by reference.

117. As a result of the nuclear tests conducted at Bikini Atoll by the United States (see paragraphs 68-72) and defendants' ongoing refusal to clean up and restore Bikini Atoll to its former radiologically safe, habitable and environmentally sound condition, Bikini Atoll today constitutes a public nuisance. The people of Bikini are a recognized public political subdivision within the Marshall Islands, and defendants, by their actions described above, have created a public nuisance at Bikini and have unreasonably interfered with the general public rights of the people of Bikini to the use and enjoyment of their land and lagoon.

118. The above-described actions of defendants have created radiological conditions at Bikini Atoll such that a return by the Bikinians to Bikini, absent a cleanup, would result in radiation doses in violation of federal radiation protection standards.

119. The above-described actions of defendants constitute a continuing and substantial interference with the public health, safety, and convenience and the well-being of the Bikini people and have produced a significant and long-lasting adverse effect on the public rights of the people of Bikini.

120. Defendants have taken the above-described actions with knowledge that they would have a significant adverse effect on the public rights of the people of Bikini.

COUNT III

ARBITRARY AND CAPRICIOUS ACTION; ABUSE OF AGENCY DISCRETION UNDER ADMINISTRATIVE PROCEDURE ACT

121. Paragraphs 1-108, 110-115, and 117-120 are realleged and incorporated by reference.

122. The above-described failures of the Secretaries of Energy, Interior, Defense and State and the Director of the DOE Pacific Area Support Office to carry out U.S. duties and obligations to the people of Bikini under the Trusteeship Agreement and the Charter of the United Nations are arbitrary and capricious and constitute an abuse of discretion under the Administrative Procedure Act, 5 U.S.C. § 701 et seq..

123. As a result of these actions, the people of Bikini have been and continue to be adversely affected and aggrieved parties within the meaning of 5 U.S.C. § 702.

COUNT IV

VIOLATION OF DUE PROCESS AND TAKING CLAUSES OF FIFTH AMENDMENT

124. Paragraphs 1-108, 110-115, 117-120 and 122-123 are realleged and incorporated by reference.

125. As a result of the above-described actions, defendants have unlawfully engaged in a continuing taking of the land and lagoon of Bikini Atoll in violation of the due process and taking clauses of the fifth amendment to the U.S. Constitution, which provide: "No person shall be . . . deprived

of . . . property without due process; nor shall private property be taken for public use, without just compensation." This taking was initially effected on March 7, 1946, when the United States forced the Bikinians to move from their atoll in preparation for the U.S. nuclear testing program at Bikini.

126. The extent of the damage to and taking of Bikini Atoll was not revealed until July 1, 1979, when the United States informed Congress that Bikini Island could not be safely resettled for at least the next 30-60 years.

127. As a result of this taking, plaintiffs were totally deprived of the use, occupancy and enjoyment of their land and lagoon from March 1946 to June 1969 and from August 1978 to this day and substantially deprived of the use, occupancy and enjoyment of their land and lagoon from June 1969 to August 1978.

COUNT V

MANDAMUS

128. Paragraphs 1-108, 110-115, 117-120, 122-123 and 125-127 are realleged and incorporated by reference.

129. As a result of the above-described actions, defendant Secretaries of Energy, Interior, Defense and State and Director of the DOE Pacific Area Support Office have violated certain mandatory duties and obligations to the people of Bikini under the Trusteeship Agreement and the Charter of the United Nations, including principally the duty to protect plaintiffs from the loss of their lands and resources.

130. Moreover, as a result of the above-described actions, defendants have violated the due process clause of the fifth amendment to the U.S. Constitution, by depriving plaintiffs of their lands without due process of law.

DEMAND FOR JUDGMENT

WHEREFORE, named plaintiffs and their class pray:

1. That the Court declare that defendants have violated and continue to violate the United Nations Trusteeship Agreement and the Charter of the United Nations as described in Count I and that the Court order specific performance of the Trusteeship Agreement requiring the defendants to perform a radiological cleanup of Bikini Atoll, restore the atoll to its former safe, habitable and environmentally sound condition, and speedily resettle the people of Bikini on Bikini Atoll.

2. That the Court declare that defendants have created a public nuisance as described in Count II and that the Court order the abatement of the nuisance, requiring the defendants to perform a radiological cleanup of Bikini Atoll, restore the atoll to its former safe, habitable and environmentally sound condition, and speedily resettle the people of Bikini on Bikini Atoll.

3. That the Court declare that defendants' actions in violating the duties and obligations assumed by the United States under the United Nations Trusteeship Agreement and the Charter of the United Nations are arbitrary and capricious and

constitute an abuse of discretion as described in Count III and that the Court order a permanent injunction, requiring defendant Secretaries of Energy, Interior, Defense and State and Director of the DOE Pacific Area Support Office to perform a radiological cleanup of Bikini Atoll, restore the atoll to its former safe, habitable and environmentally sound condition, and speedily resettle the people of Bikini on Bikini Atoll.

4. That the Court declare that defendants have deprived plaintiffs of their land and lagoon in violation of the due process and taking clauses of the fifth amendment to the U.S. Constitution as described in Count IV, and that the Court enter a permanent injunction requiring defendants to perform a radiological cleanup of Bikini Atoll, restore the atoll to its former safe, habitable and environmentally sound condition, and speedily resettle the people of Bikini on Bikini Atoll.

5. That the Court declare that defendant Secretaries of Energy, Interior, Defense and State and Director of the DOE Pacific Area Support Office have violated their duties and obligations to the people of Bikini under the United Nations Trusteeship Agreement, the Charter of the United Nations and the due process clause of the fifth amendment to the U.S. Constitution as described in Count V, and that the Court issue

a writ of mandamus, requiring the above defendants to perform a radiological cleanup of Bikini Atoll, restore the atoll to its former safe, habitable and environmentally sound condition, and speedily resettle the people of Bikini on Bikini Atoll.


6. That the Court enter an order certifying the class and allowing named plaintiffs to represent the class described in paragraph 22.

7. That the Court enter judgment against defendants for costs, including attorneys fees, incurred by plaintiffs in this litigation.

8. That the Court grant such other and further relief as may be just and proper.

Respectfully submitted,

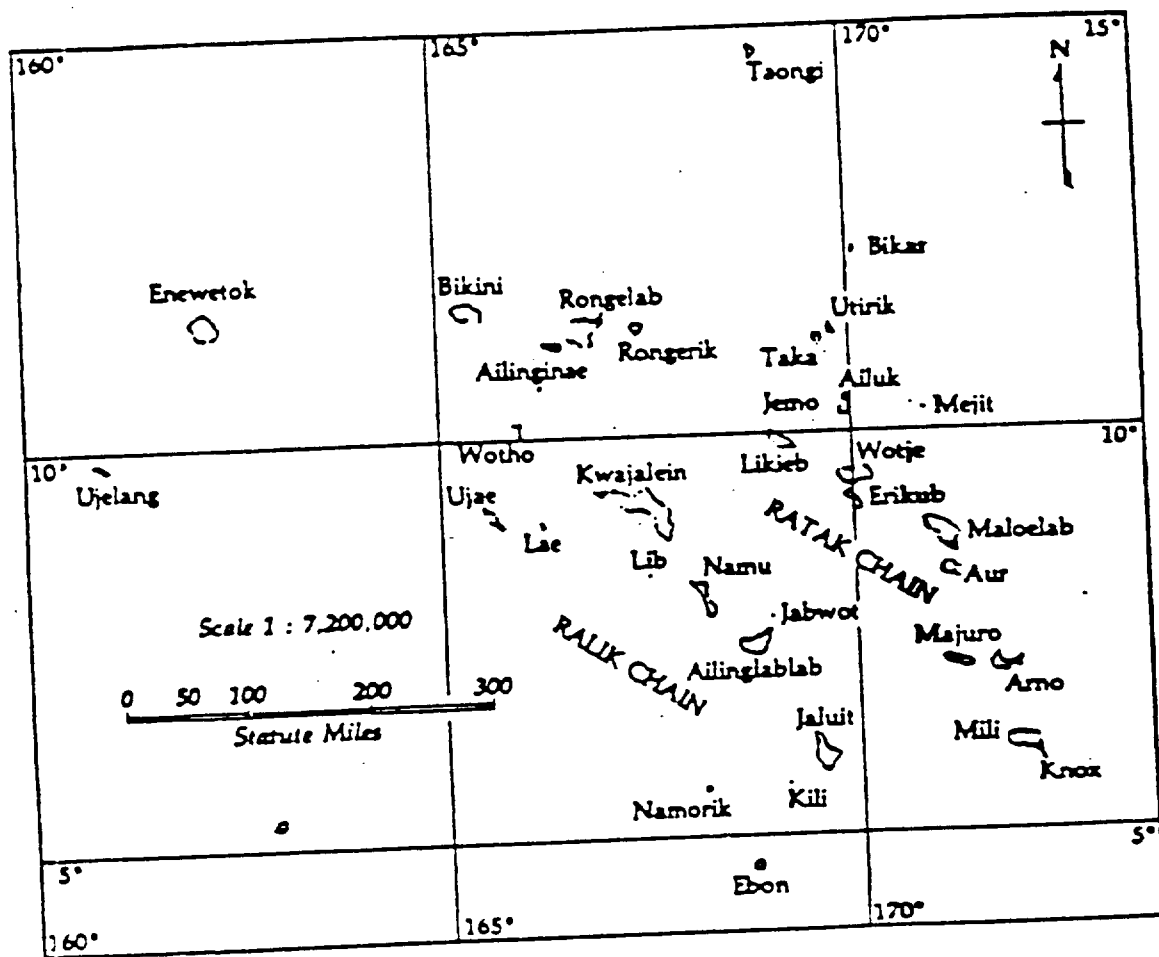

JONATHAN M. WEISGALL


ELIZABETH LANGER

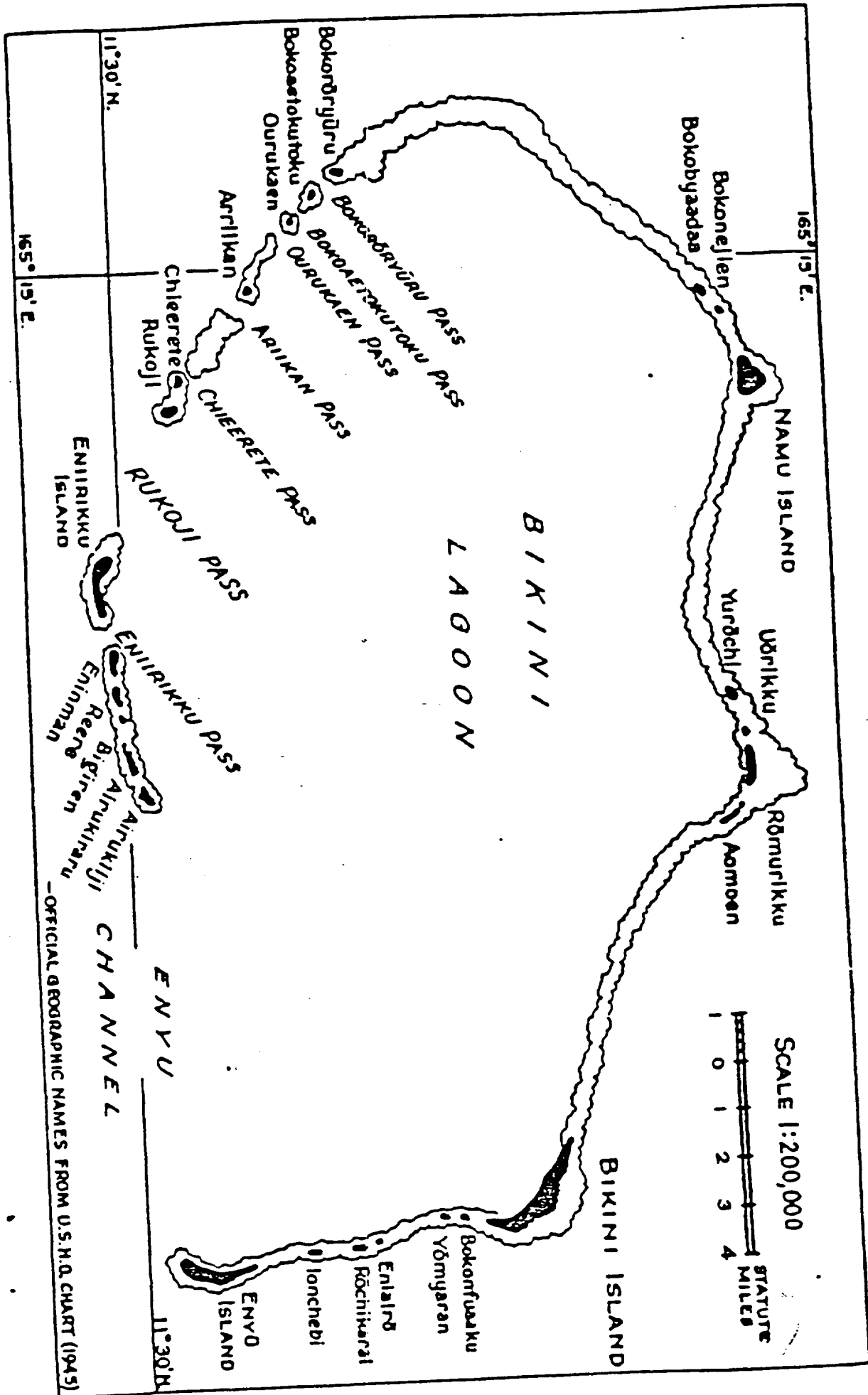

RICHARD R. CLIFTON

Attorneys for Plaintiffs

Dated: May 1, 1984



The Marshall Islands.



MAP OF BIKINI ATOLL

EXHIBIT C

TRUSTEESHIP AGREEMENT FOR THE UNITED STATES TRUST TERRITORY OF THE PACIFIC ISLANDS

PREAMBLE

WHEREAS Article 75 of the Charter of the United Nations provides for the establishment of an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent agreements; and

WHEREAS under Article 77 of the said Charter the trusteeship system may be applied to territories now held under mandate; and

WHEREAS on 17 December 1920 the Council of the League of Nations confirmed a mandate for the former German islands north of the equator to Japan, to be administered in accordance with Article 22 of the Covenant of the League of Nations; and

WHEREAS Japan as a result of the Second World War has ceased to exercise any authority in these islands;

NOW, THEREFORE, the Security Council of the United Nations, having satisfied itself that the relevant articles of the Charter have been complied with, hereby resolves to approve the following terms of trusteeship for the Pacific Islands formerly under mandate to Japan.

ARTICLE 1

The Territory of the Pacific Islands, consisting of the islands

formerly held by Japan under mandate in accordance with Article 22 of the Covenant of the League of Nations, is hereby designated as a strategic area and placed under the trusteeship system established in the Charter of the United Nations. The Territory of the Pacific Islands is hereinafter referred to as the trust territory.

ARTICLE 2

The United States of America is designated as the administering authority of the trust territory.

ARTICLE 3

The administering authority shall have full powers of administration, legislation, and jurisdiction over the territory subject to the provisions of this agreement, and may apply to the trust territory, subject to any modifications which the administering authority may consider desirable, such as the laws of the United States as it may deem appropriate to local conditions and requirements.

ARTICLE 4

The administering authority, in discharging the obligations of trusteeship in the trust territory, shall act in accordance with the Charter of the United Nations, and the provisions of this agreement, and shall, as specified in Article 83 (2) of the Charter, apply the objectives of the international trusteeship system, as set forth in Article 76 of the Charter, to the people of the trust territory.

ARTICLE 5

In discharging its obligations under Article 76(a) and Article 84 of the Charter, the administering authority shall ensure that the trust territory shall play its part, in accordance with the Charter of the United Nations, in the maintenance of international peace and security. To this end the administering authority shall be entitled:

1. to establish naval, military and air bases and to erect fortifications in the trust territory;
2. to station and employ armed forces in the territory; and
3. to make use of volunteer forces, facilities and assistance from the trust territory in carrying out the obligations toward the Security Council undertaken in this regard by the administering authority, as well as for the local defense and maintenance of law and order within the trust territory.

ARTICLE 6

In discharging its obligations under Article 76(b) of the Charter, the administering authority shall:

1. foster the development of such political institutions as are suited to the trust territory and shall promote the development of the inhabitants of the trust territory toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned; and to this end shall give to the inhabitants of the trust territory a progressively increasing share in the administrative services in the territory; shall develop their participation in government; shall give due recognition to the customs of the inhabitants in providing a system of law for the territory; and shall take

other appropriate measures toward these ends;

2. promote the economic advancement and self-sufficiency of the inhabitants, and to this end shall regulate the use of natural resources; encourage the development of fisheries, agriculture, and industries; protect the inhabitants against the loss of their lands and resources, and improve the means of transportation and communications;

3. promote the social advancement of the inhabitants, and to this end shall protect the rights and fundamental freedoms of all elements of the population without discrimination; protect the health of the inhabitants; control the traffic in arms and drugs; and institute such other regulations as may be necessary to protect the inhabitants against social abuses; and

4. promote the educational advancement of the inhabitants, and to this end shall take steps toward the establishment of a general system of elementary education; facilitate the vocational and cultural advancement of the population; and shall encourage qualified students to pursue higher education, including training on the professional level.

ARTICLE 7

In discharging its obligations under Article 76(c), of the Charter, the administering authority shall guarantee to the inhabitants of the trust territory freedom of conscience, and, subject only to the requirements of public order and security, freedom of speech, of the press, and of assembly; freedom of worship, and of religious teaching; and freedom of migration and movement.

ARTICLE 8

1. In discharging its obligations under Article 76(d) of the

Charter, as defined by Article 83 (2) of the Charter, the administering authority, subject to the requirements of security, and the obligation to promote the advancement of the inhabitants, shall accord to nationals of each Member of the United Nations and to companies and associations organized in conformity with the laws of such Member, treatment in the trust territory no less favorable than that accorded there to nationals, companies and associations of any other United Nations except the administering authority.

2. The administering authority shall ensure equal treatment to the Members of the United Nations and their nationals in the administration of justice.

3. Nothing in this Article shall be so construed as to accord traffic rights to aircraft flying into and out of the trust territory. Such rights shall be subject to agreement between the administering authority and the state whose nationality such aircraft possess.

4. The administering authority may negotiate and conclude commercial and other treaties and agreements with Members of the United Nations and other states, designed to attain for the inhabitants of the trust territory treatment by the Members of the United Nations and other states no less favourable than that guaranteed by them to the nationals of other states. The Security Council may recommend, or invite other organs of the United Nations to consider and recommend, what rights the inhabitants of the trust territory should acquire in consideration of the rights obtained by Members of the United Nations in the trust territory.

ARTICLE 9

The administering authority shall be entitled to constitute the trust territory into a customs,

fiscal, or administrative union or federation with other territories under United States jurisdiction and to establish common services between such territories and the trust territory where such measures are not inconsistent with the basic objectives of the International Trusteeship System and with the terms of this agreement.

ARTICLE 10

The administering authority, acting under the provisions of Article 3 of this agreement, may accept membership in any regional advisory commission, regional authority, or technical organization, or other voluntary association of states, may co-operate with specialized international bodies, public or private, and may engage in other forms of international co-operation.

ARTICLE 11

1. The administering authority shall take the necessary steps to provide the status of citizenship of the trust territory for the inhabitants of the trust territory.

2. The administering authority shall afford diplomatic and consular protection to inhabitants of the trust territory when outside the territorial limits of the trust territory or of the territory of the administering authority.

ARTICLE 12

The administering authority shall enact such legislation as may be necessary to place the provisions of this agreement in effect in the trust territory.

ARTICLE 13

The provisions of Articles 87 and 88 of the Charter shall be applicable to the trust territory, provided that the administering

authority may determine the extent of their applicability to any areas which may from time to time be specified by it as closed for security reasons.

ARTICLE 14

The administering authority undertakes to apply in the trust territory the provisions of any international conventions and recommendations which may be appropriate to the particular circumstances of the trust territory and which would be conducive to the achievement of the basic objectives of Article 6 of this agreement.

ARTICLE 15

The terms of the present agreement shall not be altered, amended or terminated without the consent of the administering authority.

ARTICLE 16

The present agreement shall come into force when approved by the Security Council of the United Nations and by the Government of the United States after due constitutional process.